

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (C) No.1819 of 2017

Pradeep Kumar Xess, S/o Stanis Xess, aged about 57 years,
Member of Janpad Panchayat Balrampur, Area No.9, Tatapani,
Janpad Panchayat Balrampur, Distt. Balrampur-Ramanujganj
(C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Panchayat and Rural Development, Mahanadi Bhawan, New Raipur, Distt. Raipur (C.G.)
2. The Collector, Balrampur, Distt. Balrampur-Ramanujganj (C.G.)
3. Sub Divisional Officer Revenue, Ramanujganj, Distt. Balrampur-Ramanujganj (C.G.)
4. Smt. Parwati Ayam, Member of Janpad Panchayat, now she was elected on the post of President, Janpad Panchayat, Balrampur, Distt. Balrampur-Ramanujganj (C.G.)

---- Respondents

For Petitioner: Mr. A.N. Pandey, Advocate.

For State/Respondents No.1 to 3: -

Mr. P.K. Bhaduri, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

06/07/2017

1. The petitioner herein, who is member of Janpad Panchayat, Balrampur, has called in question the election of respondent No.4 herein on the post of President, Janpad Panchayat, Balrampur. For the post of President, Janpad Panchayat, Balrampur, election was notified by the Collector, Balrampur on 13-6-2017 fixing the date of election as 21-6-2017, on that day, election was held and respondent No.4 was declared elected. The result was declared on 21-6-2017 itself. The petitioner filed writ petition on 28-6-2017

stating inter alia that election for the post of President, Janpad Panchayat, Balrampur was not notified by the State Election Commission in accordance with Rule 89 of the Chhattisgarh Panchayat Nirvachan Niyam, 1995 (for short, 'the Rules of 1995') and, therefore, the election held is unconstitutional and declared to be void.

2. Learned counsel for the petitioner would submit that unless the election is notified under Rule 89 of the Rules of 1995, no election could have been held on the post of President and, therefore, the election so held is unsustainable and it be declared void.
3. Learned State counsel would submit that there is a constitutional provision which bars the interference of courts in electoral matters and refers to Article 243-O of the Constitution of India which provides that notwithstanding anything in this Constitution, no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.
4. I have heard learned counsel for the parties and perused the documents available on record.
5. It would be expedient to notice Article 243-O of the Constitution of India, relevant portion of which reads thus,

“243-O. Bar to interference by courts in electoral matters.—Notwithstanding anything in this Constitution,

(a) *** *** ***

(b) no election to any Panchayat shall be called in

question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.”

6. A studied perusal of the aforesaid provision would show that this constitutional provision clearly bars interference by courts in electoral matters i.e. election to Panchayats, which includes Janpad Panchayat, which could be called in question except by presenting election petition to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.
7. The Supreme Court in the matter of **C. Subrahmanyam v. K. Ramanjaneyullu and others**¹ has held that a writ petition should not be entertained when the main question for decision before the High Court was non-compliance of a provision of the Act, which was one of the grounds for an election petition in terms of Rule 12 framed under the Andhra Pradesh Panchayat Raj Act, 1994. It has been held in para 3 as under: -

“3. In our opinion, the main question for decision being the non-compliance of a provision of the Act which is a ground for an election petition in Rule 12 framed under the Act, the writ petition under Article 226 of the Constitution of India should not have been entertained for this purpose. ...”

8. In the matter of **Jaspal Singh Arora v. State of M.P. and others**² the Supreme Court has held that election of President of Municipal Council cannot be challenged by a writ petition in view of the bar contained in Article 243-ZG of the Constitution of India. Their Lordships in para 3 of the report held as under: -

1 (1998) 8 SCC 703

2 (1998) 9 SCC 594

“3. ... In view of the mode of challenging the election by an election petition being prescribed by the M.P. Municipalities Act, it is clear that the election could not be called in question except by an election petition as provided under that Act. The bar to interference by courts in electoral matters contained in Article 243-ZG of the Constitution was apparently overlooked by the High Court in allowing the writ petition. Apart from the bar under Article 243-ZG, on settled principles interference under Article 226 of the Constitution for the purpose of setting aside election to a municipality was not called for because of the statutory provision for election petition and also the fact that an earlier writ petition for the same purpose by a defeated candidate had been dismissed by the High Court.”

9. Further, the Supreme Court in the matter of Harnek Singh v.

Charanjit Singh and others³ has held that since the election petitioner has the remedy available under Section 89(1)(d)(iv) of the Punjab State Election Commission Act, 1994, the writ petition filed under Article 226 of the Constitution of India would not be maintainable and noticed the decisions of the Supreme Court in C. Subrahmanyam (supra) and Jaspal Singh Arora (supra).

10. In this case, the main ground of the petitioner is that Rule 89 of the Rules of 1995 has not been followed while conducting election. Rule 21 of the Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995 provides grounds for declaring election to be void. Rule 21(1)(d) (iv) of the Rules reads as follows: -

“21. Grounds for declaring election to be void.—(1)
Subject to the provisions of sub-rule (2) if the specified officer is of opinion-

(d) that the result of the election in so far as it concerns returned candidate has been materially affected—

(iv) by any non-compliance with the provisions of

3 (2005) 8 SCC 383

the Act or of any rules or orders made thereunder;

the specified officer shall declare the election of the returned candidate to be void.”

11. Thus, from the aforesaid rule, Rule 21(1)(d)(iv), it is evident that non-compliance with the provisions of the Act or any rules or orders made thereunder is clearly a ground for declaring an election to be void and such a ground is available to the petitioner to be raised in the election petition filed under the Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995.
12. The constitutional provision mandates that no such election to the Panchayat is to be called in question except by way of election petition. There is legislative injunction against the entertainment of the present writ petition in view of the express bar contained in Article 243-O (b) of the Constitution of India. The petition is devoid of merit and deserves to be and is accordingly dismissed reserving liberty in favour of the petitioner to challenge the election, if any, in accordance with law. No order as to costs.

Sd/-
(Sanjay K. Agrawal)
Judge